

EXHIBIT A

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

IN RE GOOGLE PLAY STORE
 ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al., Case
 No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**GOOGLE’S RESPONSE TO EPIC’S
 OBJECTIONS TO PROPOSED VERDICT
 FORM**

Judge: Hon. James Donato

1 In its objections to the Court’s proposed verdict form, Epic invites error by asking the
 2 Court to broaden its Section 1 questions to encompass *lawful* conduct. The Court should decline
 3 to do so.

4 Specifically, Epic contends that the Games Velocity Program (“GVP”) agreements
 5 prevented the developers who were parties to those agreements from offering exclusive deals
 6 elsewhere. Epic does not cite a single case supporting this theory of anticompetitive conduct, nor
 7 has Epic presented a theory of how this theory could have injured Epic. That is because Epic’s
 8 theory—that it should be able to argue to the jury that Project Hug violated Section 1 by
 9 “depriving” other app stores of exclusive games—is legally deficient. Epic does not and cannot
 10 suggest that Google itself obtained any exclusives from any developer. Rather, its complaint is
 11 essentially that Google *competed* to obtain these titles for its own stores (non-exclusively) and, as
 12 a result, other stores lost an opportunity to get a competitive advantage through an exclusive deal.
 13 But the antitrust laws do not require Google to idly stand by while other app stores obtain
 14 exclusive deals, and Google offering customers a better deal to win a competition is not conduct
 15 “the antitrust laws were designed to prevent.” *See Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S.
 16 104, 111, 115-16 (1986); *cf. W. Parcel Exp. v. United Parcel Serv. of Am., Inc.*, 190 F.3d 974, 976
 17 (9th Cir. 1999) (non-exclusive volume-based discount contracts “are legal under antitrust law”).

18 A competitor may lawfully offer incentives like rebates and above-cost competitive
 19 pricing.¹ *See, e.g., Pac. Bell Tel. Co. v. linkline Commc’ns, Inc.*, 555 U.S. 438, 452 (2009);
 20 *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 318-19 (2007); *Brooke*
 21 *Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 223 (1993); *Cascade Health Sols.*
 22 *v. PeaceHealth*, 515 F.3d 883, 910 (9th Cir. 2008); *see NicSand v. 3M*, 507 F.3d 442, 451-52 (6th
 23 Cir. 2007) (holding that above-cost upfront “cash payments” to “obtain ... business” could not
 24 cause an antitrust injury because “[r]ather than upsetting the competition-enhancing goals of the
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 28 ¹ Indeed, [e]ven a monopolist is permitted to compete in the battle for trade.” *In re IBM Peripheral EDP Devices Antitrust Litig.*, 481 F. Supp. 965, 991 (N.D. Cal. 1979), *aff’d sub nom. Transamerica Computer Co. v. Int’l Bus. Machs. Corp.*, 698 F.2d 1377 (9th Cir. 1983).

1 antitrust laws, the payments furthered them”). That is the essence of competition; and that is what
2 happened with GVP deals.

3 Accordingly, the Court should overrule Epic’s objection to the proposed verdict form.

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5 DATED: December 8, 2023

Respectfully submitted,

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7 By: /s/ Glenn D. Pomerantz
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